CF0000062158

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

CRIMINAL APPEAL NO. 791 OF 1999

UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE 1973

APPELLANT (IN JAIL) : Suklal,s/o Chamra Gond,aged 37 years, r/o village Pusapal,P.S. Farsagaon, District Bastar M.P.

VERSUS

RESPONDENT : The State of M.P. through S.H.O., P.S. Farasgaon,District Bastar M.P.

(3342)
14/10/31
U.S. Deende
Advocate
Bhs 1371

(20)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..CR.A.N.O.2.7.9/ 22 ~~सन् 200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Shri L.C. Bhadoo &

Hon'ble Shri Dhirendra Mishra, JJ.

28-2-2007:-

Shri Alok Bakshi, counsel for the appellant.

Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 20/8/99 passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur in S.T. No.129/97 whereby learned Additional Sessions Judge after holding the accused/appellant guilty under Section 302 of the I.P.C. for committing murder of Bhaktu Ram, sentenced him to undergo imprisonment for life & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year.

The case of the prosecution is that on the fateful day Suklal came to the house of Lakhmu Ram at about 9-10 a.m. and asked him that his meal be also cooked in his house, as his wife is not at the residence, at that time Pankin Bai was at her residence and was busy in preparing broom. At about 11-12 noon Dhadkin Bai came there for selling paddy to Lakhmu, therefore, Lakhmu went inside the house for weighing paddy. In the meantime, the accused picked up axe lying there and attacked deceased Bhaktu Ram which was seen by Pankin Bai, therefore, she raised cries and called Lakhmu saying that Suklal has attacked Bhaktu Ram, on which Lakhmu came out and saw that the accused was attacking

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आदेश पत्रक (पूर्वानुबद्ध)

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Bhaktu Ram, thereafter he ran away. He saw body of the deceased. There were injuries on the neck, temporal region and blood was oozing out of the injuries. The matter was reported to the police station Pharasgaon under Ex.-P/1. After registering the crime under Section 302 of the I.P.C., station house officer Rajendra Kumar Sinha left for the scene of occurrence. He sent body of Bhaktu Ram for postmortem examination to the Community Health Centre, Pharasgaon where Dr. G. Mishra conducted post-mortem, prepared post-mortem report (Ex.-P/2), in which he opined that death was homicidal in nature. Cause of death is injury to great vessels leading to haemorrhage and shock. While in the police custody, the accused gave memorandum Ex.-P/5 regarding axe, weapon of offence, in pursuance of that, axe was got recovered at the instance of the accused under Ex.-P/6. Plain soil and blood stained soil was taken into possession under Ex.-P/7.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate 1st Class Kondagaon, who in turn committed the case to the Sessions Judge, Jagdalpur from where learned Additional Sessions Judge received the case on transfer.

The prosecution in order to establish the charge against the accused examined 8 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence, stated that he is innocent and has been falsely implicated in the crime. After hearing learned counsel for the respective parties, learned Additional Sessions Judge convicted and sentenced the accused as aforementioned.

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आदेश पत्रक (पूर्वानुबद्ध)

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We have heard learned counsel for the parties.

Learned counsel for the accused/appellant has not disputed homicidal death of the deceased. Moreover, from the ocular evidence of PW-3 Pankin Bai and PW-2 Lakhmu Ram, who have stated that the accused assaulted the deceased with axe as also medical evidence of Dr. G. Mishra (PW-5), who conducted postmortem on the body of the deceased and has stated that there was incised wound on the right side of cheek in the size of 4cm x 2 cm x 2 cm, on account of that great vessels was cut, mandible bone was fractured, injuries were ante-mortem in nature, death was homicidal in nature, it is established that death of deceased Bhaktu Ram was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, PW-3 Pankin Bai has stated that on the fateful day at the relevant time, she was sitting at her house, she was preparing broom. Lakhmu Ram and Bhaktu Ram were working in the kitchen garden. At about 11 a.m. the accused was sitting in the kitchen garden. In the meantime, Dhadkin Bai came with paddy, therefore, Lakhmu went with Dhadkin Bai in his house for weighing the paddy. In the meantime, the accused attacked the deceased with axe, on which she raised cries, therefore, Lakhmu came out but the accused ran away with axe. The evidence of Pankin Bai is corroborated by the evidence of PW-2 Lakhmu Ram. He has also stated that the accused came to his house and requested him that his meal be cooked at his house because his wife is not at the residence. In the meantime, Dhadkin Bai came with paddy for selling the same, therefore, he went inside the house for weighing paddy. In the meantime, Pankin Bai raised cries that the accused has attacked

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आदेश पत्रक (पूर्वानुबद्ध)

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the deceased with axe, on which he came out of the house and saw that Bhaktu Ram was already dead and the accused ran away with axe. When he tried to catch him, the accused tried to attack him also. The evidence of these two witnesses is further corroborated by the evidence of PW-4 Dhadkin Bai. She has stated that she came to the house of Lakhmu for selling the paddy. When Lakhmu was weighing paddy, at that time, they heard cries of Pankin Bai that the accused is attacking the deceased with axe. Therefore, from the above evidence, presence of the accused on the scene of occurrence is established, as Pankin Bai saw the accused attacking the deceased, on which she raised cries, Lakhmu came out and he tried to catch the accused but he ran away. There is no contradiction in the evidence of these witnesses. There is nothing in cross-examination of these witnesses which makes the evidence of these witnesses unreliable or untrustworthy.

Learned counsel for the accused/appellant argued that Pankin Bai has admitted in her cross-examination that there was plant of beans between the house of Lakhmu and her house, therefore, it was not possible for her to see the incident.

We have perused evidence of Pankin Bai. In her cross-examination, nothing has come which shows that there was total obstruction between the house of Pankin Bai and Lakhmu. Moreover, in the cross-examination, she has stated that she saw the accused attacking the deceased with axe. Her evidence, as mentioned above, stands corroborated by the evidence of Lakhmu, who has stated that the accused came to his house with a request that meal be also cooked for him because his wife is not available in his house, even Dhadkin Bai has also

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Barve	corroborated the evidence of Pankin Bai. Therefore, we do not find any substance in the argument advanced by learned counsel for the accused/appellant. In view of the evidence of these witnesses as also medical evidence, it is established that the accused was author of the crime in question who caused fatal injury to the deceased with axe, as such we do not find any illegality or infirmity in the judgment of the trial Court. In the result, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

P.T.O.